

**Public Chapter 219**

**SENATE BILL NO. 770**

**By Atchley**

Substituted for: House Bill No. 563

By Rhinehart, Curtiss

AN ACT To amend Tennessee Code Annotated, Title 8, Chapter 36, Parts 1 and 5; Section 8-36-701(a)(3) and Section 8-37-104, relative to the Tennessee Consolidated Retirement System.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-36-108(b)(1), is amended by deleting the phrase "state employee or teacher" in the first sentence thereof and by substituting instead the word "member"; and by further deleting the phrase "state employee's or teacher's" wherever it may appear and by substituting instead the word "member's".

SECTION 2. Tennessee Code Annotated, Section 8-36-108(b)(5), is amended by deleting it in its entirety and by substituting instead the following:

(5) Notwithstanding any other law to the contrary, in all cases where a beneficiary is receiving benefits from workers' compensation, social security, or the Division of Claims Administration on account of the death of the member, the benefit payable under this section shall be reduced so that the beneficiary's survivor benefit, together with benefits from workers' compensation, social security and the Division of Claims Administration, does not exceed the member's average final compensation. Any lump sum payments made by workers' compensation, social security, or the Division of Claims Administration shall be prorated over the period of time the payments would have been made had the payments not been commuted to a lump sum. For the purposes of integrating workers' compensation, social security or Division of Claims Administration payments with the survivor benefits provided herein, compensation shall include any payments made by workers' compensation, social security or the Division of Claims Administration, except payments made for hospital or medical expenses incurred by the member.

SECTION 3. Tennessee Code Annotated, Section 8-36-108(b), is amended by adding the following new subdivision at the end thereof:

(6) This subsection (b) shall not apply to individuals who are members of the retirement system by virtue of their employment with any employer participating in the retirement system pursuant to Chapter 35 of this title unless

the governing body of any such employer passes a resolution authorizing and accepting the associated liability and costs to provide such benefits.

SECTION 4. Tennessee Code Annotated, Title 8, Chapter 36, Part 1, is amended by adding the following new section:

8-36-1\_\_\_\_. (a) A person designated as the beneficiary to receive a death benefit under the provisions of Chapters 34 - 37 of this title may disclaim the benefit upon the death of the member. Such disclaimer may be made by the person's trustee, guardian, conservator, or attorney-in-fact. If the disclaimer is made by such person's fiduciary, the disclaimer shall be binding on the beneficiary and on any successor fiduciary.

(b) To be effective, the beneficiary must not have received any of the benefits, and the disclaimer must be in writing and filed with the Division of Retirement. Such writing shall:

(1) Indicate that the disclaimer is an irrevocable and unqualified refusal by the person to accept the benefit;

(2) Describe the amount of the benefit disclaimed; and

(3) Be signed by the person disclaiming or such person's representative.

(c) If a disclaimer is made under the provisions of this section, the only benefit which shall be paid is a lump sum refund of the excess amount of the member's accumulated contributions over the sum of the retirement allowance payments received by the member, if any. Said amount shall be paid in accordance with § 8-36-120.

SECTION 5. Tennessee Code Annotated, Section 8-36-501, is amended by deleting it in its entirety and by substituting instead the following:

(a) Ordinary Disability Retirement Authorized. Upon the application of a member in service who has completed the service requirement for such member's classification as set forth in subsection (b) below, and who does not otherwise qualify for a service retirement allowance as provided for in §§ 8-36-201 - 8-36-205, such member may be retired by the board of trustees on an ordinary disability retirement allowance.

(b) Creditable Service Required. The number of years of creditable service which a member shall have completed to be eligible for ordinary disability retirement shall be:

(1) Five (5) years for a member in Group 1 or 2; and

(2) Eight (8) years for a member in Group 3 or 4.

(c)(1) Amount of Allowance. Upon ordinary disability retirement, a member shall receive a service retirement allowance if eligible therefor. Otherwise, the member shall receive an ordinary disability retirement allowance until the member's attainment of service retirement age as provided in §§ 8-36-201 - 8-36-205. The ordinary disability retirement allowance shall be equal to nine tenths (9/10) of a service retirement allowance as computed in accordance with §§ 8-36-206 - 8-36-207 on

the basis of the member's average final compensation and creditable service at the time of ordinary disability retirement.

(2) Notwithstanding the foregoing, if the member has completed less than twenty (20) years of creditable service at the time of ordinary disability retirement, the number of years of creditable service used in calculating the ordinary disability retirement allowance under subdivision (1) shall be increased to the number of years of creditable service the member would have had at the member's service retirement date had the member remained in service to such date, but not greater than twenty (20) years. This subdivision does not apply to members joining the retirement system after October 15, 1992. Any member joining the retirement system on or before October 14, 1992, shall receive the greater of the disability retirement allowance computed with or without the provisions of this subdivision.

(3) Notwithstanding the provisions of subdivisions (1) or (2) of this subsection, if the member has completed less than twenty (20) years of creditable service at the time of ordinary disability retirement, the number of years of creditable service used in calculating the ordinary disability retirement allowance under subdivision (1) shall be increased to the greater of ten (10) years or to the number of years of creditable service the member would have had at the member's service retirement date had the member remained in service to such date, but not greater than twenty (20) years. This subdivision (3) shall not apply to individuals who are members of the retirement system by virtue of their employment with any employer participating in the retirement system pursuant to Chapter 35 of this title unless the governing body of any such employer passes a resolution authorizing and accepting the associated liability and costs to provide such benefits.

(4) The maximum ordinary disability retirement allowance payable under this section shall not exceed seventy-five percent (75%) of the member's average final compensation.

(5) Except as may be reduced under subdivision (7) below, the minimum ordinary disability retirement allowance payable under this section shall be the minimum service retirement allowance computed in accordance with § 8-36-209 on the basis of the member's creditable service at the time of ordinary disability retirement.

(6) Upon the member's attainment of service retirement age as provided in §§ 8-36-201 - 8-36-205, the ordinary disability retirement allowance shall become equal to the full service retirement allowance as computed in accordance with §§ 8-36-206 - 8-36-209.

(7) Notwithstanding anything to the contrary, in all cases where a member, including a prior class member, is receiving payments from the Division of Claims Administration or workers' compensation, the disability retirement allowance payable under this section shall be reduced so that the disability retirement allowance, together with payments from the Division of Claims Administration and workers' compensation, does not exceed seventy-five percent (75%) of the member's average final compensation. Provided, however, if the member is receiving the minimum ordinary disability retirement allowance computed in accordance with § 8-36-209, said allowance shall be reduced so that the

member's disability retirement allowance, together with payments from workers' compensation and the Division of Claims Administration, does not exceed one hundred percent (100%) of the member's average final compensation. Any lump sum payment made by the Division of Claims Administration or workers' compensation shall be prorated over the period of time the payments would have been made had the payments not been commuted to a lump sum.

SECTION 6. Tennessee Code Annotated, Section 8-36-502, is amended by deleting subsections (b) - (d) thereof and by substituting instead the following:

(b) Law Enforcement Officers and Firefighters. For purposes of this section, § 7-51-201 shall not apply.

(c)(1) Amount of Allowance. For any person becoming a Group 1 or Group 2 member of the retirement system before July 1, 1997, the amount of the accidental disability retirement allowance shall equal fifty percent (50%) of the member's average final compensation, except as reduced as follows:

(A) The accidental disability retirement allowance shall be reduced to one-third (1/3) of the member's average final compensation upon the member's receipt of benefits under Title II of the Social Security Act (42 U.S.C. §§ 401-425). The reduction shall not be made in the case of a member who at the time of retirement has not accumulated sufficient quarters of coverage under the Social Security Act (42 U.S.C. §§ 301-1397f) to qualify for social security benefits at service retirement age as provided in §§ 8-36-201 - 8-36-205;

(B) Any member who is approved for an accidental disability retirement allowance to begin at fifty percent (50%) of the member's average final compensation shall be required, as a condition of continued receipt of such, to provide adequate documentation to the retirement system within thirty (30) days after notification of such approval, that the member has made application for social security disability benefits. If the application for social security benefits is denied, the member shall be given thirty (30) days from the date of denial in which to seek a reconsideration of the member's claim from the Social Security Administration and to notify the retirement system of such action. Should the member's claim for social security disability benefits be denied upon reconsideration, the member shall, within thirty (30) days after notice of such denial, file an appeal to the administrative law judge and notify the retirement system of the member's action. The member is required to keep the retirement system informed of the status of the member's claim for social security disability benefits through the entire appeals process as specified herein. Failure to comply with the requirements of this subdivision shall result in a reduction of the member's disability retirement allowance to thirty-three and one-third percent (33 1/3%) of the member's average final compensation; and

(C) Notwithstanding anything to the contrary, in all cases where a member, including a prior class member, is receiving payments from the Division of Claims Administration or

workers' compensation, the disability retirement allowance payable under this section shall be reduced so that the member's disability allowance, together with payments from the Division of Claims Administration and workers' compensation, does not exceed seventy-five percent (75%) of the member's average final compensation. Any lump sum payments made by the Division of Claims Administration or workers' compensation shall be prorated over the period of time the payments would have been made had the payments not been commuted to a lump sum.

(2) For any person becoming a Group 1 or Group 2 member of the retirement system on or after July 1, 1997, the amount of the accidental disability retirement allowance shall equal the amount of an ordinary disability retirement allowance calculated pursuant to § 8-36-501(c).

SECTION 7. Tennessee Code Annotated, Title 8, Chapter 36, Part 5, is further amended by adding the following as a new Section 8-36-505 and by redesignating the existing sections accordingly:

8-36-505. Date of Disability Retirement. Any member eligible for a disability retirement may set the effective date of such member's retirement at any date within one hundred fifty (150) days before or after the date such member's application is filed with the board; provided, that such effective date of retirement follows the date of such member's separation from service, or the date on which the member became totally and permanently disabled, whichever is later.

SECTION 8. Tennessee Code Annotated, Section 8-36-701(a)(3), is amended by deleting it in its entirety and by redesignating the subsequent subdivisions accordingly.

SECTION 9. Tennessee Code Annotated, Section 8-37-104(a), is amended by adding the following as a new subdivision (9):

(9) The board of trustees shall have the power and authority to establish an investment policy to authorize the retirement system to acquire, hold and convey real property for investment purposes. Such acquisitions may be direct, with or without partners, or in a commingled pool, provided, that:

(A) No investment may be acquired which would, at the time of the acquisition, cause the aggregate book value of all of the retirement system's holdings and investments in real property to exceed more than five percent (5%) of the market value of the total assets of the retirement system;

(B) The retirement system cannot acquire real property located in the State of Tennessee, unless such acquisition is in the shares or interests of a regulated investment company, mutual fund, common trust fund, investment partnership, real estate investment trust, or similar organizations in which funds are commingled and investment determinations as to which properties to purchase are made by persons other than the board;

(C) The board shall establish limitations on the percentage of ownership that the retirement system may hold in individual real estate properties; and

(D) The investment policy adopted by the board pursuant to this subdivision (9) shall be approved by the Legislative Council on Pensions and Insurance.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect on July 1, 1997, the public welfare requiring it.